In the High Court of Judicature at Madras

Dated: 16/09/2003

Coram

The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.39646 of 2002

V.Nagarathinam .. Petitioner

-Vs-

1. The Principal Accountant General
(Accounts & Entitlement)
Chennai.18.
2. The Regional Joint Director of
Treasuries & Accounts
Madurai./625 002.
3. The Treasury Officer
Ramanathapuram.
4. The District Elementary Educational
Officer, Ramanathapuram.
5. The Assistant Elementary Educational
Officer, R.S.Mangalam Post
Ramanathapuram. .. Respondents

Prayer: Petition filed under Article 226 of the Constituition of India for the issue of a writ of Certiorarified Mandamus as stated therein.

For petitioner : Ms.Aruna Ganesh

For respondents : Mr.R.Vijayakumar
Govt. Advocate

:O R D E R

The petitioner filed the above writ petition praying to issue a writ of Cetiorarified Mandamus to call for the records of the respondents in connection with the proceedings of the second respondent in D.O.Rc.No.4559/2002/H and to quash the order dated 01.07.2002 made therein and also to quash the consequential order of the third respondent in M.M.No.20984/2002/M2 dated 04.07.2002 and consequently to direct the respondents to fix the pension payable to the petitioner at Rs.2950 /- per month in the scale of pay, viz. Rs.5900/- to 9900/- applicable to the Headmaster of a Middle School with effect from 01.04.1999 with all arrears including the amounts erroneously recovered from the petitioner's pension. 2.

The petitioner was working as a Teacher in a middle school and retired as Headmaster on 31.05.1967. He was also getting pension thereafter. Subsequently, periodically, the pension was being revised by different Government Orders and by G.O.Ms.No.200 Finance (Pay Cell) dated 18.05.1999, the Government extended the benefit granted to the pre-1996 pensioners as well. In that G.O., Paragraph 4(i) reads as follows: " Several representations were made by various Pensioner's Associations to extend the benefit granted to the pre-1996 Pensioners/ family pensioners of the Central Government to the State Government Pensioners/family pensioners. The government has carefully examined the matter in detail and decided to extend the same benefit to the State Government pensioners/family pensioners. Accordingly, the Government pass the follows Orders: (i) In the case of employees who have retired from service prior to 1.1.96 the revised pension shall be calculated at 50% of the minimum of the revised time scale of pay introduced with effect from 1.1.96 applicable to the post last held by the employee at the time of his/ her retirement. The minimum of the scale denotes the minimum of the scale of pay applicable to Selection Grade/Special posts in the case of Selection Grade/Special Grade holders i.e., if the revised pension fixed with effect from 1.1.96 is less than the 50% of the minimum of the revised pay scale applicable to the post held at the time of retirement, the pension shall be raised to the level of 50% of the minimum of that time scale. However, such pension shall be reduced proportionately where the pension has less than the maximum qualifying service required for full pension as per rules". 3. Since the petitioner retired as Headmaster, the scale of pay for the Headmaster of Middle School was fixed as Rs.5900/- to 9000/- by G.O.Ms.No.427 Finance dated 28.08.1998. In view of revision of pay to the post of Headmaster, the petitioner claims that his pension is to be revised in accordance with the scale of pay. He made several representations and the fifth respondent by letter dated 21.09.1999 in proceedings No.Na.Ka.NO.1350/ m1/1999, directed the Treasury Officer, Ramanathapuram to grant pension as per the revised pension rules. But thereafter, the Regional Joint Director of Treasuries and Accounts, Madurai sent communication in L.Dis.No.3380/2001/H dated 4.6.2001 to the petitioner stating that the time scale of pay before 02.10.19 70 was identical for the post of Selection Grade Teacher,Elementary School, Headmaster and Middle School Headmaster and hence, specific evidence about the rank of the post held by the petitioner at the time of retirement was required. For the said communication dated 4.6.2001 , the petitioner has sent his reply dated 25.06.2001 to the Treasury Officer, Ramanathapuram to the effect that he has retired as Headmaster of the Middle School. Even the District Elementary Educational Officer, Ramanathapuram/the fourth respondent had sent a letter to the Treasury Officer which reads as follows: " With reference to the above letter cited, I herewith send necessary certificate in respect of Thiru V.Nagarathinam, Headmaster, Al Azhur Higher Elementary School. Thiruppaikudi, relied on 31.05.1967". The fourth respondent has also sent a certificate to the following effect: "This is to certify that Thiru V.Nagarathinam was worked as Headmaster in Al Azhur Higher Elementary School, Thiruppalaidudi from 1.6.59 to 31.5.67 in the scale of pay of 90-4-110-3-140. It is also certified that there is no separate scale of pay for Middle School, Headmaster prior to 2.10.70."

4. Inspite of that, an order has been passed by the Treasury

Officer in his proceedings dated 03.01.2002 to the effect that since there was no separate scale of pay for Headmaster of Middle School, prior to 2.10.1970 and since he retired prior to 2.10.1970, as per G.O.Ms. No.200, Finance dated 18.05.1999, the petitioner is not eligible to get the revised pension. The order is now impugned in the present writ petition. 5. Ms.Aruna Ganesh, learned counsel appearing for the petitioner submitted that the revised G.O.is applicable to all the persons who retired prior to 1.1.1996 as per G.O.Ms.No.200, Finance dated 18.5.1999 . As per the G.O.Ms.No.200, the revised pension is payable at 50% of the minimum scale of pay which was payable to the post held by the person who retired. Therefore, the minimum pay for the post of Headmaster that is applicable from 1.1.1996 is Rs.5900/- to 9000/-. Therefore, the petitioner is entitled for minimum pension of Rs.2950/- but is being paid only Rs.2250/-. Inspite of his application for revision of pension, the petitioner's pension has not been revised and instead, the impugned order has been sent to the petitioner, which is not legally sustainable and it is against the G.O.Ms.No.200, Finance dated 1 8.05.1999. Therefore, the impugned order is liable to be set aside and the revision of pay shall be allowed to the petitioner. 6. Learned Government Advocate has submitted that prior to 1970, the post of Headmaster of Middle School, there were three cadres namely, Headmaster Selection Grade, Middle School Headmaster and Secondary Grade Teachers and their pay were also one and the same like Rs.120-240. Therefore, the revision scale of pay subsequent to 1970 is different and the petitioner cannot claim the revised scale of pension so far as the post of Headmaster in the year 1967. 7. It is to be noted that no counter has been filed by the authorities concerned and hence, the argument of the learned Government Advocate is not acceptable.

8. A perusal of the G.O.No.200 Finance, dated 18.5.1999 paragraph 4(i) as extracted above, clearly shows that a person who retired prior to 1.1.1996 is eligible for a minimum pension as per the scale of pay applicable to the post last held by the person at the time of retirement. As per G.O.Ms.No.427, Finance (Cell) Department dated 28.8.1 98, the revised scales of pay for the post of Headmaster Middle School shall be Rs.5900/-- 9000/-. Therefore, from the abovesaid Government Orders it is clear that the minimum pension payable to the petitioner is Rs.2950/- in accordance with the rules. The only question that was raised by the Treasury Officer was the proof as to whether the petitioner was holding the post of Headmaster before his retirement. Even after submitting the proof, the Treasury Officer did not grant pension as per the Government Orders. The Treasury Officer seems to be under the impression that it is a gratis paid by him to the pensioners, forgetting the fact that it is the Government which grants pension to the person retired from service. The Government had taken into account the various facts and difficulties faced by the pensioners like the petitioner and therefore, passed the order for revising the pension even to a retired person who retired long year prior to 1996 but the officers have deliberately not sanctioned the pension in accordance with law and rules and that attempt of the authorities is not appreciated and it is improper to use the mildest of the words. Therefore, the petitioner is liable to succeed in the petition and is entitled for revision of pension as per G.O.Ms.No.200.

9. Learned counsel for the petitioner submitted that the petitioner

is now aged 97 years. Taking into account the fact that the petitioner is 97 years of age, the revised pension shall be calculated within a period of ten days from this day and shall be paid to the petitioner on or before 29th of September, 2003. Failure on the part of the Treasury Officer will be viewed very seriously.

10. With the above direction, the writ petition is allowed. No costs.

Index :Yes
Internet :Yes

kvsg